HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.1352 OF 2006

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Between:

Syed Fakruddin

...Appellants

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And

The Inspector – Auditor,
A.P. State Wakf Board,
Ananthapur & others

...Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Shri Mirza Safiullah Baig

Counsel for respondent Nos.1 and 3: Shri Shafath Ahmed Khan

Counsel for respondent No.2 : Shri Syed Shareef Ahmed

Counsel for respondent Nos.4 and 5: Shri T. Ghori

06.02.2007

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 20.11.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant against his removal from the position of Mujawar of Dargah Hazrath Syed Shah Baba Fakruddin situated at Penukonda.

It is borne out from the record that the writ

petition was earlier disposed of by the learned Single Judge on 06.06.2006 by giving liberty to the appellant to prefer an application under Section 83(2) of the Andhra Pradesh Wakf Act, 1995 (for short 'the Act') . That order was set aside by the Division Bench in Writ Appeal No.732 of 2006 because Section 83(2) does not provide for remedy against the removal of Mujawar by the Muthavalli. On remand, the learned Single Judge dismissed the writ petition by observing that the writ petitioner (the appellant herein) who has been impleaded as defendant No.1 in O.S.No.31 of 2006 filed by respondent Nos. 4 and 5 before the Wakf Tribunal, can raise all grounds and the question of competency of Muthavalli to remove the Mujawar can be decided by the Tribunal as a preliminary issue.

We have heard Shri Mirza Safiulla Baig, learned counsel for the appellant, Shri Shefath Ahmed Khan, learned counsel for respondent Nos. 1 and 3, Shri Syed Shareef Ahmed, learned counsel for respondent No.2, Shri M.T. Ghori, learned counsel for respondent Nos. 4 and 5 and perused the record.

Learned counsel for respondent Nos. 4 and 5 vehemently argued that the only remedy available to the appellant is to file a petition under Section 64 of the Act and the writ petition is not an appropriate remedy. According to the learned counsel, even though the learned Single Judge has not dismissed the writ petition by relegating the appellant to the remedy under Section 64, the Division Bench may dismiss the appeal and leave the appellant free to avail remedy available under Section 64 of the Act.

In our opinion, there is no substance in this

argument of the learned counsel. A reading of the order under challenge shows that the learned single Judge did not non-suit the appellant on the ground of availability of alternative remedy under Section 64 of the Act. Instead, he dismissed the petition simply by observing that in his capacity as defendant No.1 in O.S.No.31 of 2006 filed by respondent Nos. 4 and 5 before the Wakf Tribunal, the writ petitioner can raise objections.

Even if the view taken by the learned Single Judge on the right of the appellant to contest O.S.No.31 of 2006 by raising all legally permissible objections is treated as correct, we have no hesitation to observe that in the proceedings instituted by respondent Nos. 4 and 5, the appellant cannot get any substantive relief. The Tribunal cannot grant a declaration that his removal from the office of Mujawar was illegal and reinstate him in that office.

In view of the above, we hold that the dismissal of the writ petition filed by the appellant is vitiated by an error of law.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for hearing. The same may now be listed before an appropriate Bench in the month of April 2007. The respondents may file their counter-affidavits within four weeks from today.

As a sequel to disposal of the appeal, W.A.M.P.No.2864 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

06.02.2007
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